

AMENDED IN SENATE APRIL 10, 2002

SENATE BILL

No. 2032

Introduced by Senator Monteith

(Coauthors: Senators Knight and Oller)

(Coauthors: Assembly Members Ashburn, Briggs, Bill Campbell, Leach, Maldonado, Robert Pacheco, Strickland, and Wyland)

February 22, 2002

An act to *add Section 1353.5 to the Civil Code, and to amend Section 434.5 of the Government Code, relating to the United States flag.*

LEGISLATIVE COUNSEL'S DIGEST

SB 2032, as amended, Monteith. Display of the United States flag.

Existing law prohibits any person, private entity, or governmental agency from adopting rules, regulations, or ordinances, or entering into any agreement or covenant, preventing any person or private entity who would otherwise have the legal right to display a flag of the United States on private property from exercising that right, unless it is used as, or in conjunction with, an advertising display, subject to specified conditions. *The term "legal right" is defined for this purpose to mean the freedom of use and enjoyment generally exercised by owners and occupiers of land.*

The Davis-Stirling Common Interest Development Act sets forth certain requirements for declarations and governing documents of common interest developments.

This bill would additionally prohibit any person, private entity, or governmental agency from renewing any agreement or covenant described in ~~these~~ *the provisions relating to display of the flag of the United States*. It would *specify that an "owner and occupier of land" for this purpose includes an owner of a separate interest in a common*

interest development, and would prohibit any declaration or other governing document of a common interest development from prohibiting, or being construed to prohibit, the display of the flag of the United States in violation of these provisions. It would also provide that, in any action brought to enforce these provisions, the prevailing party shall be awarded reasonable attorneys' fees and costs.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. *It is the intent of the Legislature in enacting this*
2 *act to provide for all of the following:*

3 (a) *That homeowners throughout the state shall be able to*
4 *display a flag of the United States.*

5 (b) *That owners of a separate interest in a common interest*
6 *development shall be specifically included within the group of*
7 *owners and occupiers of land with a legal right to display a flag*
8 *of the United States, as defined by subdivision (b) of Section 434.5*
9 *of the Government Code.*

10 (c) *That a homeowner who is unlawfully prohibited from flying*
11 *a flag of the United States shall recover those costs and attorneys'*
12 *fees incurred in enforcing his or her right to do so.*

13 SEC. 2. *Section 1353.5 is added to the Civil Code, to read:*

14 1353.5. *No declaration or other governing document shall*
15 *prohibit, or be construed to prohibit, the display of the flag of the*
16 *United States by an owner, in violation of Section 434.5 of the*
17 *Government Code.*

18 SEC. 3. *Section 434.5 of the Government Code is amended to*
19 *read:*

20 434.5. (a) *No person, private entity, or governmental agency*
21 *shall adopt rules, regulations, or ordinances, or enter into or renew*
22 *any agreement or covenant, that prevents any person or private*
23 *entity who would otherwise have the legal right to display a flag*
24 *of the United States on private property from exercising that right,*
25 *unless it is used as, or in conjunction with, an advertising display.*

26 (b) *As used in this section, "legal right" means the freedom of*
27 *use and enjoyment generally exercised by owners and occupiers*
28 *of land. For purposes of this subdivision, an "owner and occupier*
29 *of land" includes, but is not limited to, an owner of a separate*

1 *interest in a common interest development, as defined in*
2 *subdivision (c) of Section 1351 of the Civil Code.*

3 (c) Nothing in this section shall be construed to prevent a city,
4 county, or city and county from imposing reasonable restrictions
5 as to the time, place, and manner of placement or display of a flag
6 of the United States when necessary for the preservation of the
7 public's health, safety, or order. However, no restrictions solely to
8 promote aesthetic considerations may be imposed.

9 (d) In any action brought to enforce this section *or Section*
10 *1353.5 of the Civil Code*, the prevailing party shall be awarded
11 reasonable attorneys' fees and costs.

